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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of

2005 AUG -3 : A 9:03

Republican Governors Association

MUR 5390

GENERAL COUNSEL'S REPORT #2

SENSITIVE

I. ACTIONS RECOMMENDED

Find reason to believe the Republican Governors Association ("RGA") violated 2 U.S.C. § 441b(a), and approve the appropriate letter.

II. DISCUSSION

MUR 5390 involves the campaign fundraising activities of the Federal Home Loan Mortgage Corporation ("Freddie Mac") and members of its Government Relations department, principally Robert Mitchell Delk, Senior Vice President, and Clark Camper, Vice President. On September 14, 2004, the Commission found reason to believe that: 1) Ser Inc. (d/b/a Galileo Restaurant) violated 2 U.S.C. § 441b; 2) Epiphany Productions, Inc. violated 2 U.S.C. § 441b; 3) Freddie Mac violated 2 U.S.C. § 441b; 4) Robert Mitchell Delk, Leland Brendsel, and Clarke Camper, as corporate officers and agents, violated 2 U.S.C. § 441b; and 5) the Republican National Committee ("RNC") and Michael L. Retzer, as treasurer, violated 2 U.S.C. § 441b.

With respect to the RNC, the basis for the Commission's reason to believe finding was information that the RNC knowingly received a \$150,000 contribution made by Freddie Mac on October 25, 2002 to the RGA, which we believed at the time was part of the RNC. See First General Counsel's Report dated Aug. 9, 2004, at 24-28.¹ This contribution was the final

¹ 2 U.S.C. § 441b(a) prohibits, *inter alia*, any corporation organized by authority of any law of Congress from making a contribution or expenditure in connection with "any election to any political office." It also prohibits "any candidate, political committee, or other person" from knowingly accepting or receiving "any contribution prohibited by this section."

1 installment of a \$250,000 pledge made in February 2002 by Freddie Mac. Freddie Mac made the
2 first part of the contribution in March 2002 by writing a check to the "RGA Building Fund."²
3 See Freddie Mac Submission of April 14, 2004, Att. 28. Accompanying the check was a letter
4 indicating that Freddie Mac intended that the contribution be used only to defray the cost of
5 constructing or purchasing office facilities not acquired for the purpose of influencing the
6 election of any candidate to public office. See *id.* On October 24, 2002, Freddie Mac received a
7 solicitation from the RGA for the remaining \$150,000. The solicitation instructed Freddie Mac
8 to write a check to the RGA. According to Freddie Mac, it believed that at the time the RGA
9 was still affiliated with the RNC and still raised money for the Building Fund. See Freddie Mac
10 Response to RTB findings dated Nov. 22, 2004, at 11. Freddie Mac made the final installment
11 of the contribution on October 25, 2002 by delivering a check for \$150,000 made payable to the
12 RGA to Wayne Berman, the Honorary Finance Chairman of the RGA and a Freddie Mac
13 consultant. The RGA deposited this contribution into its operating account on October 29, 2002.

14 Contrary to Freddie Mac's understanding, it now appears that the RGA and RNC had
15 severed ties at the time Freddie Mac made the \$150,000 contribution. The RNC claims that the
16 last date it deposited a contribution on behalf of the RGA was September 5, 2002, and that when
17 Freddie Mac made its \$150,000 contribution to the RGA on October 25, 2002, the RGA was
18 operating independently of the RNC. See RNC Response to RTB finding dated Nov. 26, 2004,

² The RGA does not and has never maintained a building fund. The RNC operated a fund under the name RNC Committee to Preserve the Dwight D. Eisenhower National Republican Center ("Building Fund") and accepted contributions to the Building Fund on behalf of the RGA. Prior to the passage of the Bipartisan Campaign Reform Act of 2002 ("BCRA"), Pub. L. 107-155, 116 Stat. 81 (2002), the so-called "building fund exemption" permitted national and state committees of political parties to accept donations from corporations, including those like Freddie Mac, which are organized by authority of any law of Congress, "specifically designated to defray any cost for construction or purchase of any office facility not acquired for the purpose of influencing the election of any candidate in any particular election for Federal office." 2 U.S.C. § 431(8)(B)(viii) (emphasis added). Funds falling under the building fund exemption are exempt from the prohibitions of 2 U.S.C. § 441b. See 11 C.F.R. § 114.1(a)(2)(ix). BCRA, which took effect November 6, 2002, just days after Freddie Mac's \$150,000 contribution to the RGA, removed the building fund exemption for national party committees.

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1 at 1. According to the RNC, "the RGA was (in October 2002) and is a separate and distinct
2 organization from the RNC." *See* RNC Subpoena Response dated Dec. 22, 2004, at 1. Further,
3 although "no persons at the RGA have knowledge of the last date the RNC" deposited
4 contributions on behalf of the RGA, the RGA has represented that the transition to an entity
5 entirely independent of the RNC began on October 4, 2002. *See* RGA Subpoena Response dated
6 Mar. 15, 2005, at 3-4. If the RGA was not part of the RNC at the time the RGA received the
7 \$150,000 contribution from Freddie Mac and deposited the funds into its operating account, then
8 the RGA, and not the RNC, may be in violation of 2 U.S.C. § 441b. This Office intends to seek
9 additional information from the RGA concerning the timing of the separation between the RGA
10 and the RNC to determine more precisely when the separation was completed. This Office also
11 intends to interview two witnesses who are believed to have been involved in the solicitation and
12 receipt of the contribution at issue.

13 Accordingly, for the same reasons set forth in the First General Counsel's Report as to
14 the RNC, this Office recommends that the Commission find reason to believe the Republican
15 Governors Association violated 2 U.S.C. § 441b by knowingly receiving a prohibited
16 contribution

17 This Office will make an appropriate recommendation as to the RNC at a later date.

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III. RECOMMENDATIONS

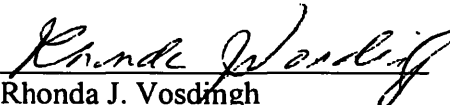
1. Find reason to believe that the Republican Governors Association violated 2 U.S.C. § 441b;
2. Approve the attached Factual and Legal Analysis.
- 3.
4. Approve the appropriate letters.

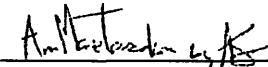
Lawrence H. Norton
General Counsel

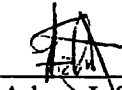
Date

8/2/05

BY:


Rhonda J. Vosdingh
Associate General Counsel


Ann Marie Terzaken
Assistant General Counsel


Adam J. Schwartz
Attorney

Attachment:

1. Factual and Legal Analysis – Republican Governors Association